

DEPARTMENT OF THE ARMY  
Wilmington District, Corps of Engineers  
Post Office Box 1890  
Wilmington, North Carolina 28402-1890  
(<http://www.saw.usace.army.mil/wetlands/regtour.htm>)

Action ID No. 200400320

February 6, 2004

PUBLIC NOTICE

Food Lion, LLC, Post Office Box 1330, Salisbury, North Carolina 28145, has applied for a Department of the Army (DA) permit TO PLACE EARTHEN FILL MATERIAL WITHIN 1 ACRE OF JURISDICTIONAL WETLANDS IN ORDER TO CONSTRUCT A FOOD LION STORE (0.48 ACRES OF WETLAND IMPACTS), PLACE CULVERT AND CONSTRUCT ROAD (0.04 ACRES OF WETLAND IMPACTS) AND DEVELOP RESIDENTIAL LOTS (0.48 ACRES OF WETLAND IMPACTS). THE PURPOSE OF THE PROPOSED PROJECT IS TO CONSTRUCT A MULTIUSE DEVELOPMENT THAT INCLUDES A FOOD LION STORE AND SINGLE FAMILY RESIDENTIAL HOME SITES ON OAK ISLAND. The proposed 15-acre project site located at the intersection of East Oak Island Drive and Southeast 59<sup>th</sup> Street, in Oak Island, Brunswick County, North Carolina.

The following description of the project site is taken from data provided by the applicant and from observations made during onsite inspections by representatives of the Corps of Engineers. The site is approximately 15 acres in size and borders East Oak Island Drive to the north, Southeast 59<sup>th</sup> Street to the west, the oceanfront to the south, and Southeast 61<sup>st</sup> Street to the east, in Oak Island. Encroaching development isolates the ecological communities present on the property and the vegetative patterns present reflect past land use activities such as clearing and grading.

The property is located on an artificial barrier island in the coastal plain physiographic province. This barrier island was separated from the mainland during the excavation of the Intracoastal Waterway. Elevations for the property range from 5 to 15 feet above mean sea level. There are four soil mapping units mapped as occurring on the property. The hydric soil mapping units are Leon fine sand (*Aeric Haplaquods*) and Duckston fine sand (*Typic Psammaquents*). The nonhydric soil mapping units that may contain inclusions of hydric soils for the subject property are Wando fine sand (*Typic Udipsamments*) and Newhan fine sand (*Typic Quartzipsamments*). The hydric inclusions associated with these mapping units are Leon fine

sand and beaches, respectively. No nonhydric soil mapping units are mapped for the subject property.

The upland plant community present on the property consists of Maritime Deciduous Forest. This community is located on the northern portion of the property and contains an open canopy dominated by live oak (*Quercus virginiana*) and an understory composed of mockernut hickory (*Carya tomentosa*), black cherry (*Prunus serotina*), and Florida dogwood (*Cornus florida*). Herbaceous vegetation throughout this community includes partridge berry (*Mitchella repens*) and greenbrier (*Smilax smallii*).

The two-wetland plant communities present on the property are Interdune Pond and Maritime Swamp Forest. The Interdune Pond community is located on the southern portion of the property and is a monotypic stand of common reed (*Phragmites australis*). The Maritime Swamp Forest community is located in the central portion of the subject property and grades into the adjacent plant communities to the north and south. The canopy in this community is composed of black gum (*Nyssa sylvatica*), swamp tupelo (*N. biflora*), water oak (*Quercus nigra*), and red maple (*Acer rubrum*). Herbaceous vegetation includes netted chain-fern (*Woodwardia areolata*), royal fern (*Osmunda regalis*), and cinnamon fern (*O. cinnamomea*).

The following is an alternatives analysis provided by the applicant on the proposed project:

A total of five properties were initially investigated on Oak Island for the proposed Food Lion store (Figure 2). The property that Food Lion has under contract is the only property that provides the necessary space and accessibility needed. The additional sites investigated were either too small in size, lacked the necessary access, or were prohibitively expensive.

- Site 1 is the site that Food Lion currently has under contract. This site provides the required road frontage, access, and minimum size to accommodate the Food Lion store. This site also has the least amount of wetlands area of the sites evaluated. This site meets the stated purpose and need.
- Site 2 is located on the adjacent property to the east. This site has a larger amount of wetlands area with less developable land than Site 1 and also has a higher asking price than Site 1.

- Site 3 is located at the southeast corner of the intersection of East Oak Island Drive and NE 58<sup>th</sup> Street. This site was too small to accommodate the Food Lion store and has since been developed with a Wings store and is no longer available.
- Site 4 is located at the northeast corner of the intersection of East Oak Island Drive and NE 58<sup>th</sup> Street. This site was too small to accommodate the Food Lion store.
- Site 5 is located south of East Oak Island Drive between SE 51<sup>st</sup> Street and SE 52<sup>nd</sup> Street. A mobile home park and the access road for the mobile home park divide this site. The current owner was not willing to relocate any of the mobile homes or the access road making the buildable area present on the site too small to accommodate the Food Lion store.

The master development plan for this project proposes to subdivide the property into one commercial lot and sixteen residential lots (Master Plan Alternate #2 Drawing). The disposition for these lots is as follows: a stand alone Food Lion store with potential future store expansion and future attached retail shops and associated parking, five residential lots that front Southeast 59<sup>th</sup> Street, five residential lots that front Southeast 61<sup>st</sup> Street, and six oceanfront residential lots with a common access easement. A public beach access at the southern terminus of Southeast 59<sup>th</sup> Street and reinstallation of a culvert on Southeast 61<sup>st</sup> Street to access the oceanfront lots is also planned. The master development plan proposes to plat and grade the residential lots. All other construction activities on the residential lots are the responsibility of the subsequent owners of the lots and are not included as part of this permit application.

Three alternatives were considered for developing the oceanfront residential lots. The setback for these lots has been established using the "first line of stable, natural vegetation" as determined by N.C. Division of Coastal Management-CAMA (DCM-CAMA) staff on August 21, 2003.

#### Alternative Site Plan 1

This alternative evaluates the feasibility of developing the commercial lot and side street lots without the oceanfront lots. This alternative eliminates the fill associated with the oceanfront lots and the culvert reinstallation since these activities would not be conducted. A separate site development plan for this alternative was not prepared. Land on Oak Island is very

highly valued and tracts large enough to accommodate commercial development are rare. For these reasons the purchase price of the property is higher than acceptable without the off-setting development of the oceanfront lots. An evaluation of this alternative showed that without the development of the oceanfront lots this project is not feasible. Food Lion did not consider this to be a practicable alternative.

#### Alternative Site Plan 2 (Preferred)

This alternative proposes to construct the oceanfront lots. The oceanfront residential lots will be accessed from Southeast 61<sup>st</sup> Street by means of a 26-foot wide common easement that includes a grass paver drive located on fill material behind a retaining wall (Master Plan Alternate #2 Drawing). This alternative results in 0.48 acre of impacts associated with the oceanfront residential lots and an additional 0.04 acre of impacts from the reinstallation of the culvert. This site plan is Food Lion's preferred alternative.

#### Alternative Site Plan 3

This alternative proposes to construct the oceanfront lots. The oceanfront residential lots will be accessed from Southeast 61<sup>st</sup> Street by means of a 26-foot wide common easement constructed on an elevated timber deck to minimize impacts resulting from fill to jurisdictional wetlands (Master Plan Alternate #3 Drawing). This alternative results in 0.20 acre of impacts from fill associated with the oceanfront residential lots and an additional 0.04 acre of impacts from the reinstallation of the culvert. Even though this alternative reduces the amount of jurisdictional wetlands that will be filled it will disturb the same wetland area as Alternative 2 through clearing and permanently shading wetland areas. While shading wetland areas is not classified as an impact under Section 404(b)(1) guidelines these wetland areas will experience a loss of ecological function if permanently shaded. The loss of ecological function to wetlands from this alternative will be the same as the preferred alternative. This alternative is not considered feasible or practicable by the applicant, since it will significantly increase construction costs and reduce the value of the lots without decreasing the wetland area that will be affected.

## No Action Alternative

A "No Action" alternative is considered to be one that avoids all wetland and surface water impacts. A "No Action" decision for this project would result in negative economic impacts to Food Lion, LLC and the Town of Oak Island. The "No Action" alternative is not capable of achieving the basic purpose and need of the proposed project and, therefore, is not a practicable alternative by the applicant.

The applicant is proposing to mitigate for the wetland impacts by the proposed project by preserving the remaining 6.1 acres of wetlands on the project site and is presently negotiating with adjacent property owners to preserve an additional 8 acres through conservation easements.

This proposal shall be reviewed for the applicability of other actions by North Carolina agencies such as:

- a. The issuance of a Water Quality Certification under Section 401 of the Clean Water Act by the North Carolina Division of Water Quality (NCDWQ).
- b. The issuance of a permit to dredge and/or fill under North Carolina General Statute 113-229 by the North Carolina Division of Coastal Management (NCDCM).
- c. The issuance of a permit under the North Carolina Coastal Area Management Act (CAMA) by the North Carolina Division of Coastal Management (NCDCM) or their delegates.
- d. The issuance of an easement to fill or otherwise occupy State-Owned submerged land under North Carolina General Statute 143-341(4), 146-6, 146-11, and 146-12 by the North Carolina Department of Administration (NCDA) and the North Carolina Council of State.
- e. The approval of an Erosion and Sedimentation control Plan by the Land Quality Section, North Carolina Division of Land Resources (NCDLR), pursuant to the State Sedimentation Pollution Control Act of 1973 (NC G.S. 113 a-50-66).

The State of North Carolina will review this public notice to determine the need for the applicant to obtain any required State authorization. No Department of the Army (DA) permit will be issued until the coordinated State viewpoint on the proposal has been received and reviewed by this agency, nor will a DA permit be issued until the North Carolina Division of Water Quality (NCDWQ) has determined the applicability of a Water Quality Certificate as required by PL 92-500.

This application is being considered pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344). Any person may request, in writing within the comment period specified in the notice, that a public hearing be held to consider this application. Requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

The District Engineer has consulted the latest published version of the National Register of Historic Places for the presence or absence of registered properties, or properties listed as being eligible for inclusion therein, and this site is not registered property or property listed as being eligible for inclusion in the Register. Consultation of the National Register constitutes the extent of cultural resource investigations by the District Engineer, and he is otherwise unaware of the presence of such resources. Presently, unknown archeological, scientific, prehistoric, or historical data may be lost or destroyed by work under the requested permit.

Based upon available information, the District Engineer is not aware that the proposed activity will affect species, or their critical habitat, designated as endangered or threatened pursuant to the Endangered Species Act of 1973.

Based upon available information, the District Engineer has determined that the proposed action would not adversely impact Essential Fish Habitat or associated fisheries managed by the South Atlantic or Mid-Atlantic Fishery Management Councils or the National Marine Fisheries Service (50 CFR Part 600).

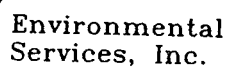
The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards and flood plain values (in accordance with Executive Order 11988), land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the placement of dredged or fill materials in waters of the United States, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agencies' 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria, a permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Generally, the decision whether to issue this Department of the Army (DA) permit will not be made until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act. The NCDWQ considers whether or not the proposed activity will comply with Sections 301, 302, 306, and 307 of the Clean Water Act. The application and this public notice for the Department of the Army (DA) permit serves as application to the NCDWQ for certification.

Additional information regarding the Clean Water Act certification may be reviewed at the offices of the Environmental Operations Section, NCDWQ, Salisbury Street, Archdale Building, Raleigh, North Carolina. Copies of such materials will be furnished to any person requesting copies upon payment of reproduction costs.

Written comments pertinent to the proposed work, as outlined above, will be received in the Wilmington Regulatory Field Office, Attn: Mr. Henry Wicker, Post Office Box 1890, Wilmington, North Carolina, 28402, until 4:15 p.m., March 8, 2004, or telephone (910) 251-4930.



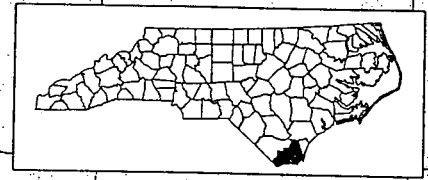
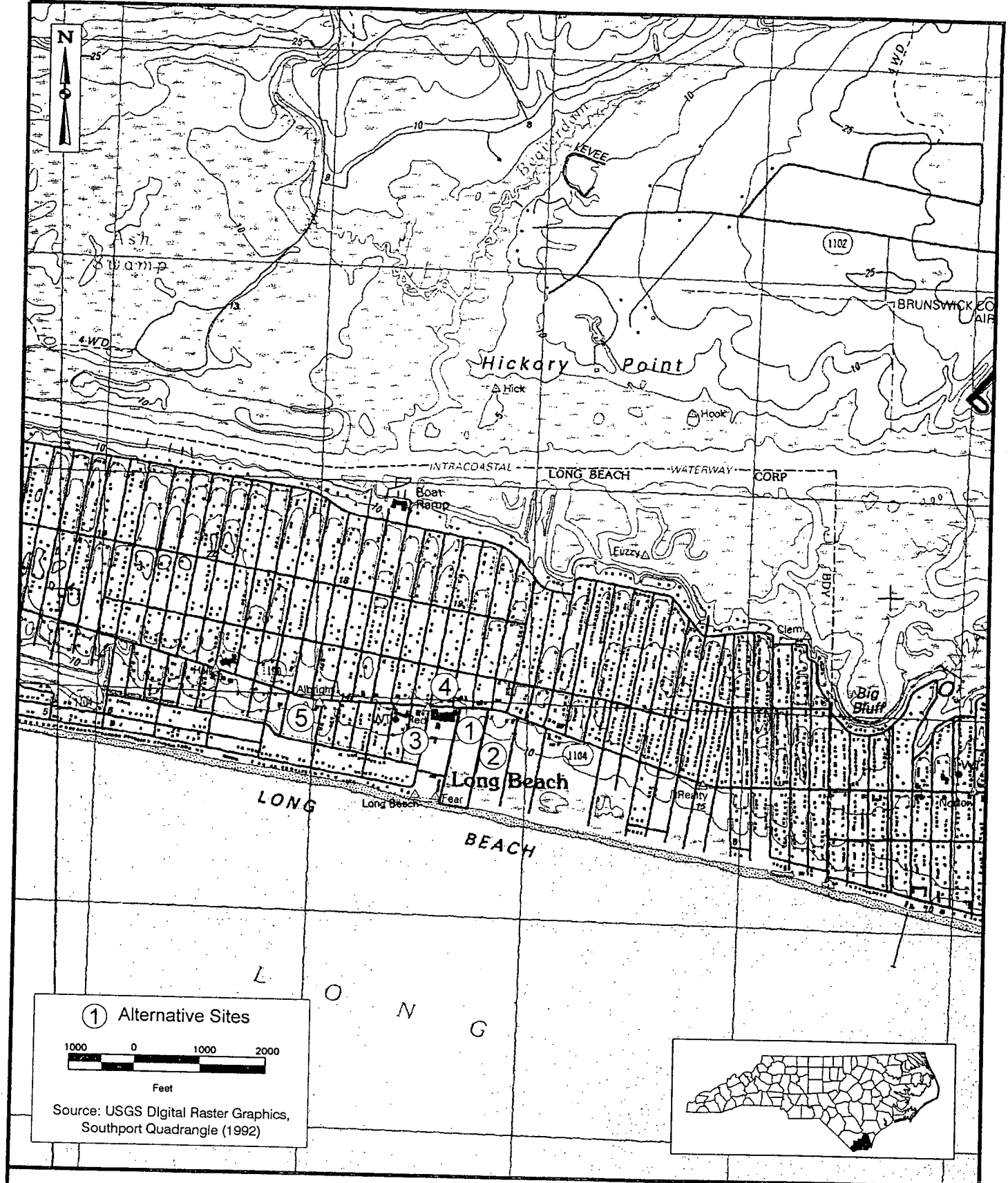
Site Location  
Proposed Food Lion Store  
Oak Island, Brunswick County, North Carolina

Figure: 1

Project: ER03062

Date: December 2003





Environmental  
Services, Inc.

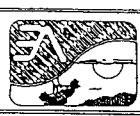
Alternative Sites Investigated  
Proposed Food Lion Store  
Oak Island, Brunswick County, North Carolina

Figure: 2  
Project: ER03062  
Date: December 2003

OAK ISLAND FOOD LION  
BRUNSWICK COUNTY, NORTH CAROLINA  
PREPARED FOR  
FOOD LION, LLC & BONDURANT ASSOCIATES

NO.	DATE	DESCRIPTION
1	11/18/03	REVISIONS PER COMMENTS
2	12/18/03	REVISIONS PER COMMENTS
3	12/18/03	REVISIONS PER COMMENTS
4	12/18/03	REVISIONS PER COMMENTS
5	12/18/03	REVISIONS PER COMMENTS
6	12/18/03	REVISIONS PER COMMENTS
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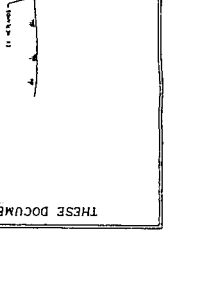
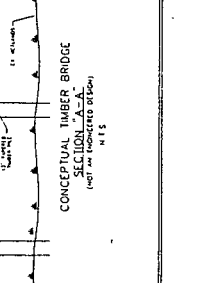
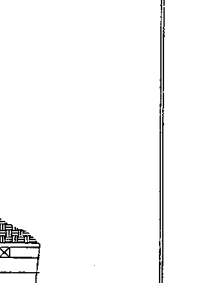
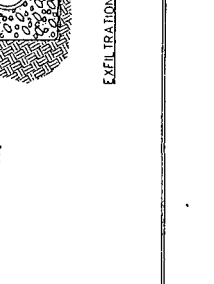
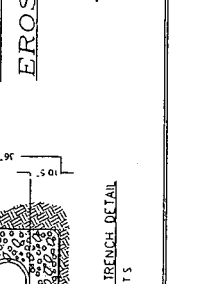
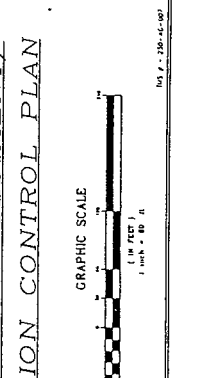
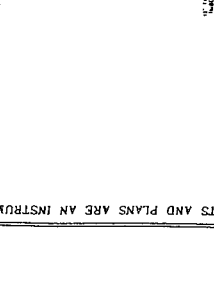
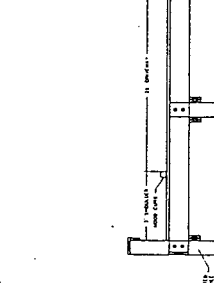
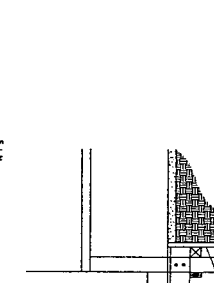
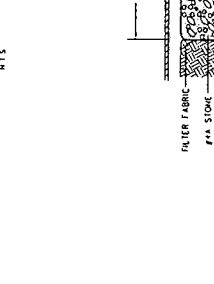
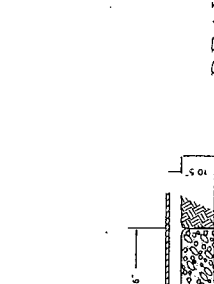
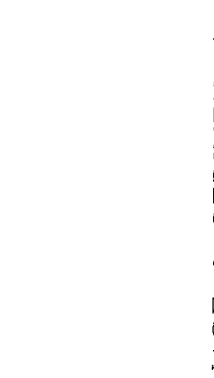
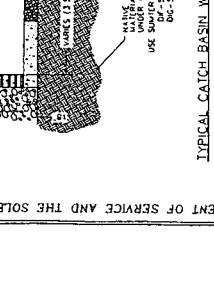
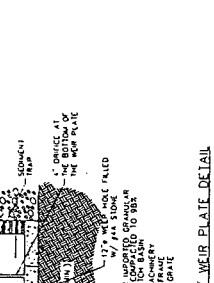
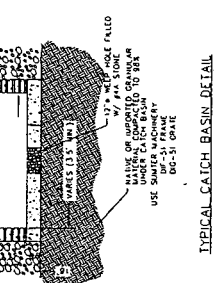
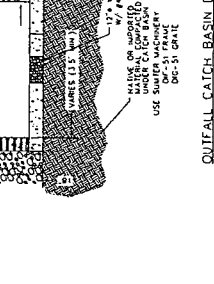
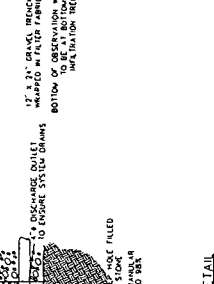
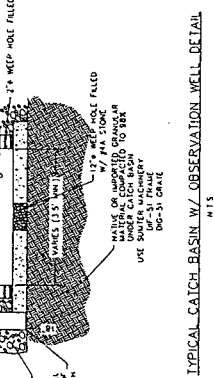
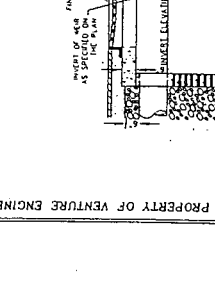
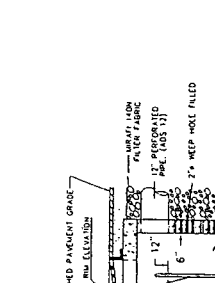
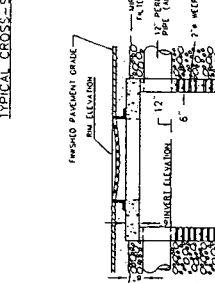
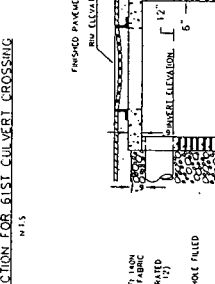
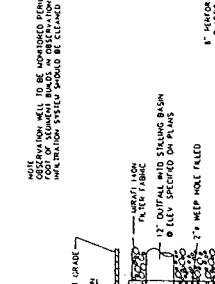
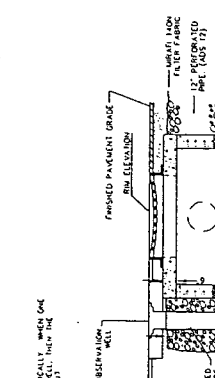
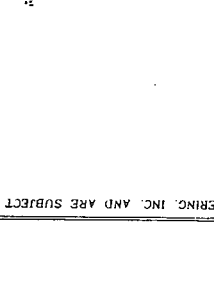
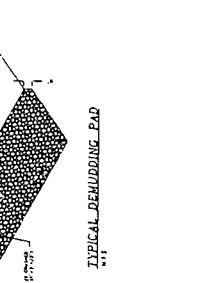
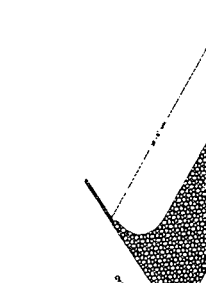
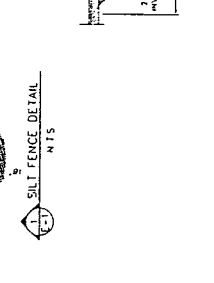
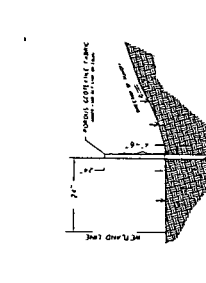
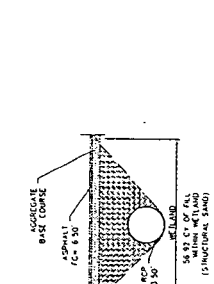
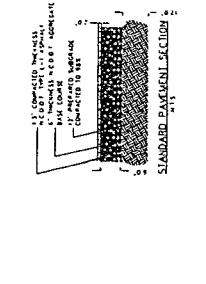
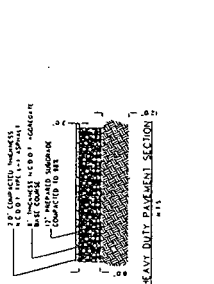
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CHECKED BY: SSP  
DATE: JUNE 17, 2003  
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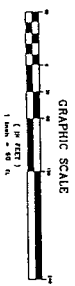
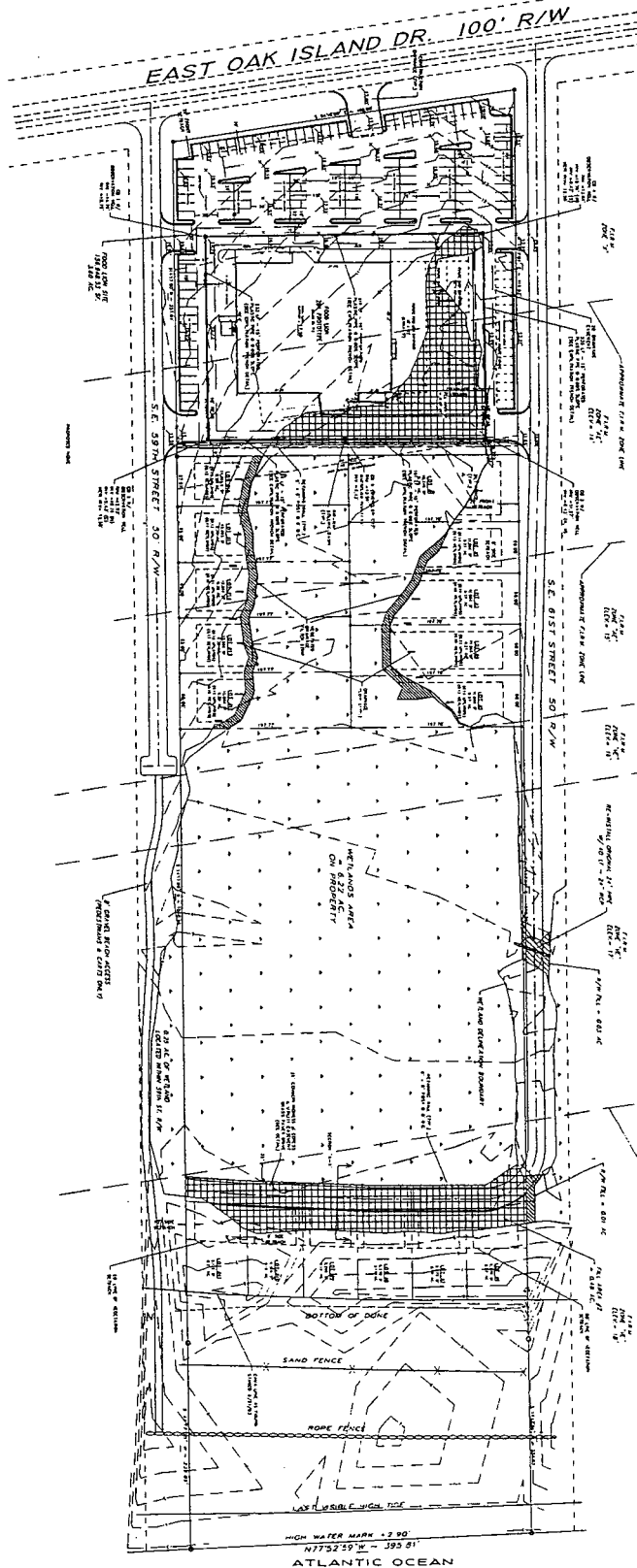


VENTURE ENGINEERING, INC. / 742 HIGHWAY 501 E. / CONWAY, S.C. 29526 / (843) 347-5851 / CIVIL ENGINEERING / LAND PLANNING

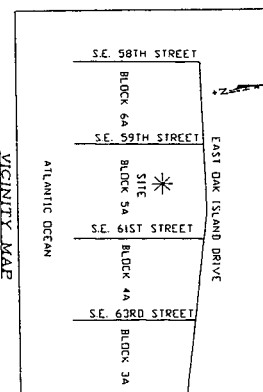
- SILT FENCE CONSTRUCTION SPECIFICATIONS**
- Remove trees and vegetation for installation area. No stumps.
  - Install silt fence using 12" x 12" x 12" concrete blocks and 12" x 12" x 12" concrete posts. Blocks and posts must be placed in a staggered pattern. Blocks must be placed in a staggered pattern. Blocks must be placed in a staggered pattern.
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**DRAINAGE & SEDIMENT/  
EROSION CONTROL PLAN  
ALTERNATE #2**

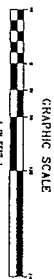
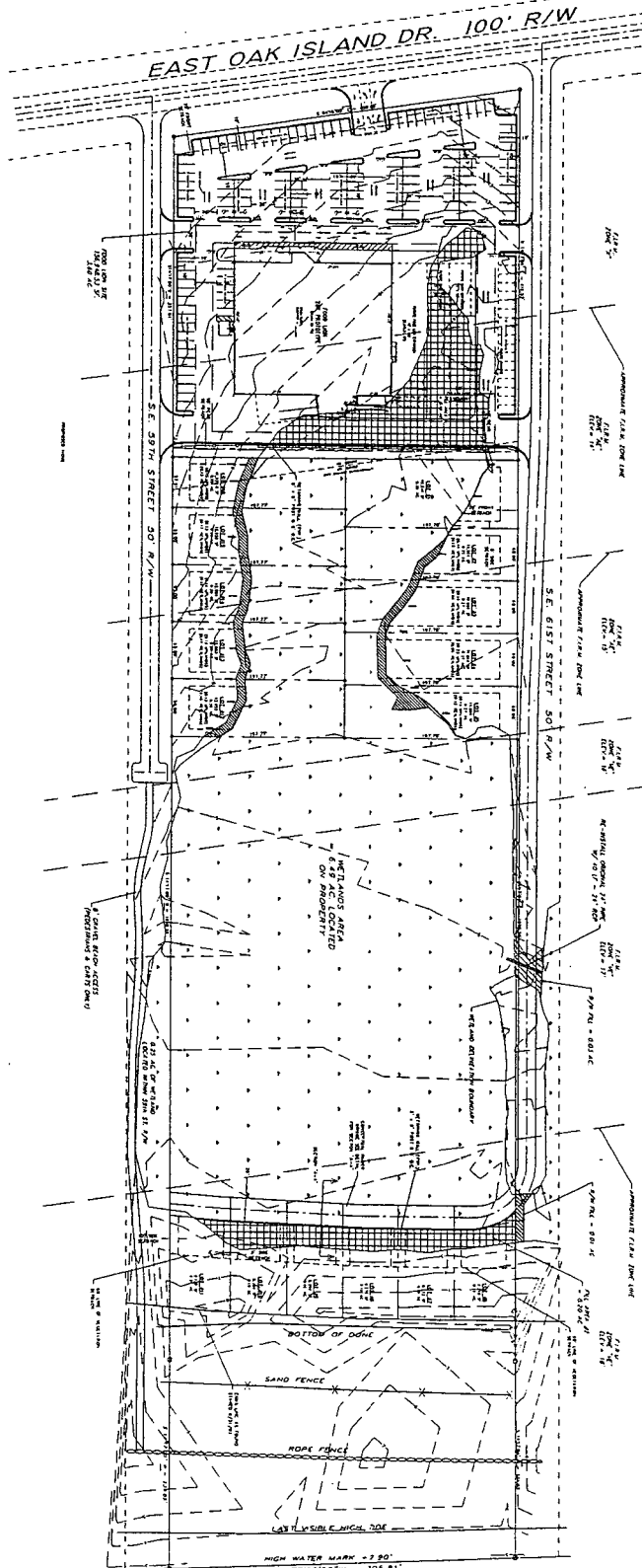


VENTURE ENGINEERING, INC. / 742 HIGHWAY 501 E. / CONWAY, S.C. 29526 / (843) 347-5851 / CIVIL ENGINEERING / LAND PLANNING

**OAK ISLAND FOOD LION**  
Brunswick County, North Carolina  
PREPARED FOR  
**FOOD LION, LLC. & BONDURANT ASSOCIATES**

DESIGNED BY: CPH		DATE: JUNE 17, 2003	
CHECKED BY: SSP		DRAWING NO: D-1	
DATE: 2003-FL		SHEET 1 OF 2	
NO.	DATE	DESCRIPTION	BY
1	11.15.03	REVISIONS PER ENGINEER	CPH





MASTER DEVELOPMENT PLAN  
ALTERNATE #3

VENTURE ENGINEERING, INC. / 742 HIGHWAY 501 E. / CONWAY, S.C. 29526 / (843) 347-5851 / CIVIL ENGINEERING / LAND PLANNING

OAK ISLAND FOOD LION  
Brunswick County, North Carolina  
PREPARED FOR  
FOOD LION, LLC. & BONDURANT ASSOCIATES

NO.	DATE	DESCRIPTION	BY
1	11/15/01	REV SITE PLAN PER FOOD LION	T.J.G.
2	5/18/03	REV SITE PLAN PER FOOD LION	T.J.G.

DESIGNED BY	T.J.G.
CHECKED BY	S.S.P.
DATE	2003-FL

DATE	JUNE 17 2003
DRAWING NO.	C-1
SHEET	1 OF 1

PARKING SUMMARY:  
FOOD LION STANDARD REQUIREMENTS - 145 SPACES  
OAK ISLAND REQUIREMENTS - 145 SPACES  
PROPOSED - 145 SPACES  
PARKING / RAINING AREA  
PROP. 28K FOOD LION - 10,346.50 SQ. FT.  
FUTURE EXPANSION - 11,777.78 SQ. FT.

